

June 1999

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Chicago-Kent Law Review

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Recommended Citation

Chicago-Kent Law Review, *Table of Contents - Issue 3*, 74 Chi.-Kent L. Rev. i (1999).

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CHICAGO-KENT LAW REVIEW

VOLUME 74

1999

NUMBER 3

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SYMPOSIUM ON REVISED UCC ARTICLE 9

SYMPOSIUM EDITORS

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TWENTY QUESTIONS ABOUT FILING UNDER REVISED ARTICLE 9:
THE RULES OF THE GAME UNDER NEW PART 5
Harry C. Sigman 861

The filing system is the heart of Article 9—key to the success of its priority scheme. Revised Article 9 made significant changes to modernize the system and make it more efficient, more user-friendly, and more uniform in its operation throughout the country. It is designed to more clearly accommodate electronic filing, minimize formalities, and decrease the likelihood of filer and filing office error. It clarifies the rules with respect to the debtor name element, multiple secured party situations, and the use by secured parties of representatives. This article illustrates the changes of greatest interest to filers in a practical format, as responses to specific questions. It seeks to maximize its usefulness to filers, filing offices, and the bench and bar by presenting analysis in the context of fact situations rather than as an abstract conceptual discussion.

DEFAULT AND ENFORCEMENT OF SECURITY INTERESTS UNDER
REVISED ARTICLE 9
Donald J. Rapson 893

Current Article 9's enforcement provisions were described by its Reporter as "a loosely organized, informal, anything-goes type of foreclosure pattern." The key provision was that disposition of collateral must be "commercially reasonable" which has been one of the most litigated areas in the entire UCC. In contrast, Revised Article 9 significantly enhances the remedies of collection and strict foreclosure and provides much needed procedural certainty to nonjudicial foreclosure. Although "commercial reasonableness" continues to be the guiding principle underlying enforcement rights and remedies, Revised Article 9 provides important insights into its meaning and interpretation.

THE IMPACT ON SECURITIZATION OF REVISED UCC ARTICLE 9

Steven L. Schwarcz 947

The recent revisions of Article 9 of the Uniform Commercial Code are expected to have a significant impact on securitization—a type of financing that is perhaps the most rapidly growing segment of the U.S. credit markets and increasingly a major part of foreign credit markets. In its current form, Article 9 governs the sale of only certain types of assets that are involved in securitization transactions. Revised Article 9 attempts to broaden its coverage to virtually all securitized assets. I analyze how it does that and what it means for Article 9 to apply to these transactions, addressing issues of perfection and priority of asset transfers, commingling of proceeds, assignability of assets in the face of contractual restrictions, and the effect of negative pledge covenants. Finally, I show that the revisions of Article 9 do much to bring the commercial law setting for securitization into the twenty-first century.

FROM PROPERTY TO CONTRACT AND BACK: AN EXAMINATION OF DEPOSIT ACCOUNTS AND REVISED ARTICLE 9

Bruce A. Markell 963

In a departure from current law, Revised Article 9 authorizes debtors to create and secured parties to take security interests in bank accounts. This article examines the changes necessitated by this policy shift, with particular emphasis on the effect of the nontemporal methods of perfection employed by Revised Article 9. It closes with a critique of these sections and with an exemplar of a security agreement that a secured party might use to obtain a security interest in a bank account under Revised Article 9.

SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS

John F. Dolan 1035

Revised Article 9 thoroughly and carefully rationalizes security interests in “letter-of-credit rights,” as it denominates what secured transactions law formerly called “letter-of-credit proceeds.” The revision wisely fashions these new rules with sedulous regard for the unique nature of letters of credit and for international and domestic letter-of-credit practices. By virtue of that uniqueness and those practices, the statutory product does not (and could not) solve all of the secured lender’s problems, however, and security interests in letter-of-credit rights remain problematic.

ELECTRONIC CHATTEL PAPER UNDER REVISED ARTICLE 9: UPDATING THE CONCEPT OF EMBODIED RIGHTS FOR ELECTRONIC COMMERCE

Jane Kaufman Winn 1055

Although the electronic chattel paper provisions of Revised Article 9 are narrowly drawn and affect only one category of financial transactions, they represent a substantial innovation in the law of electronic commerce. The concept of control of an authoritative copy sets up a framework from which the idea of electronic embodied rights systems may develop in

other bodies of law such as negotiable instruments and negotiable documents. The provisions were intended to be technology neutral and to remove existing impediments to innovation in financial markets. Because the provisions are forward looking rather than descriptive of established practice, it will not be clear for some time whether they will be successful in facilitating the further development of electronic commerce.

THE FINANCING OF INTELLECTUAL PROPERTY UNDER REVISED
UCC ARTICLE 9

Steven O. Weise 1077

Revised Article 9 helps owners of intellectual property obtain secured financing, Mr. Steven Weise explains, because the revisions simplify the procedures for obtaining and perfecting security interests in personal property, bring predictability and certainty to the results of these transactions, and lower transaction costs. Because the Drafting Committee realized that these changes would affect the rights of those not party to the transactions, it tried to carefully balance the interests of everyone affected, including licensors, licensees, and secured parties. Mr. Weise believes that the results of that balancing are practical and fair.

REPLEDGE AND PRE-DEFAULT SALE OF SECURITIES COLLATERAL
UNDER REVISED ARTICLE 9

Kenneth C. Kettering 1109

It has long been common for a broker to take securities pledged to it by its customers and repledge them to a bank to secure the broker's own debt to the bank. The practice of repledging securities collateral is now employed in many other settings in the capital markets, and so has assumed a new importance. This article summarizes how Revised Article 9 deals with repledge and its close kin, the pre-default sale of collateral.

PERFECTION HIERARCHIES AND NONTEMPORAL PRIORITY RULES

Randal C. Picker 1157

The most basic rule in all of Article 9 is that the earlier of first to file or perfect has priority. Revised Article 9 changes this by creating a perfection hierarchy: some perfections, notably perfection by control, are better than others. Professor Randal Picker examines this new scheme and the usefulness of nontemporal perfection hierarchies in general. He finds that Revised Article 9 does a better job than previously of matching collateral taken and reliance on it, assuming that control is a good proxy for reliance.

INTERNATIONAL SECURED TRANSACTIONS AND REVISED UCC
ARTICLE 9

Neil B. Cohen & Edwin E. Smith 1191

Two factors persuaded the drafters of Revised Article 9 to pay careful attention to international secured transactions: first, the credit market is much more globalized now than it was when the original Article 9 was promulgated; and second, there has been a large increase in the value of transactions dealing with intangible assets, whose situs is necessarily less certain than is the case for physical assets. Professor Neil Cohen and Mr. Edwin Smith analyze the results of the drafters' attention

and conclude that while Revised Article 9 is a significant improvement, it does not, and cannot, resolve all the issues surrounding international secured transactions. Parties would do well not to ignore the remaining uncertainties.

CONSUMER PROVISIONS IN REVISED ARTICLE 9

Marion W. Benfield, Jr. 1255

The new, and controversial, consumer-protection provisions in Revised Article 9 had to meet the sometimes conflicting interests of consumer groups and creditor groups. Professor Benfield discusses the compromise reached and predicts some unintended results. The provisions are a sort of insurance, paid for by all consumers with Article 9 debt, that will provide them with modest additional rights in the case of default. Whether the benefits are worth the costs remains to be seen.

SIMPLIFICATION IN DRAFTING—

THE UNIFORM COMMERCIAL CODE ARTICLE 9 EXPERIENCE

*Louis F. Del Duca, Vincent C. DeLiberato, Jr.,
David L. Hostetter, Kenneth C. Kettering, &*

Steven O. Weise 1309

This article is a graphic demonstration of the advantages of applying principles of simplified legislative drafting to the complicated area of Secured Transactions Law. It is hoped that the comparison of traditional and simplified drafting techniques will improve the text of Article 9 and improve legislative drafting in general.

Revised Article 9 in large measure was drafted in accordance with “Simplification—Plain English” drafting techniques, with the goal of making its complex text as clear, accessible, and user-friendly as possible. In this article, the members of the task force appointed to advise the Article 9 Drafting Committee on these matters outline these drafting techniques, describe how they were implemented in Revised Article 9, and offer suggestions as to how to best implement them in other drafting projects. The authors further suggest possible cooperative development of a Model Simplification Drafting Manual or Statement of Drafting Principles that could be used in legislative drafting by local, state, and federal agencies and legislatures and for other drafting purposes. The combined experience of the National Conference of Commissioners on Uniform State Law, the American Law Institute, the Securities and Exchange Commission, the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, and other groups involved in “Simplification—Plain English” projects could serve as a rich source of expertise to facilitate production of a high-quality, widely-accepted, and useful Model Manual or Statement of Drafting Principles.

NEW ARTICLE 9 TRANSITION RULES

Bradley Y. Smith 1339

This article analyzes Part 7 of Revised Article 9, which provides a detailed set of rules governing the transition from prior law to the full implementation of Revised Article 9. The article first presents a detailed summary of each of the provisions of Part 7. It then discusses the principal

policy decisions reflected in these provisions. Finally, it addresses selected issues likely to arise in practice during the period of transition.

**HOW SUCCESSFUL WAS THE REVISION OF UCC ARTICLE 9?:
REFLECTIONS OF THE REPORTERS**

Steven L. Harris & Charles W. Mooney, Jr. 1357

In fashioning Revised Article 9, the Drafting Committee faced a number of significant challenges: striking the appropriate balance between secured and unsecured creditors; expanding the scope of the revised Article to cover types of financing transactions and collateral that have become increasingly important over the decades since Article 9 was first widely enacted; improving the filing system; clarifying the relationship between Article 9 security interests and liens arising under other statutes; and providing enough statutory detail to make Revised Article 9 useful without providing so much detail as to make it inaccessible. In this article, the Reporters to the Drafting Committee, Steven L. Harris and Charles W. Mooney, Jr., explain the Drafting Committee's approach to meeting these challenges and assess the Drafting Committee's degree of success.

THE CHARLES GREEN LECTURE

**OPEN CODE AND OPEN SOCIETIES: VALUES OF INTERNET
GOVERNANCE**

Lawrence Lessig 1405

The development of the Internet is ultimately determined by the engineers who govern it. Professor Lessig asks what guides these engineers and finds three values that apply not only to Internet governance but also to governance of a competitive market and to governance of life in a democratic society.

CHICAGO-KENT LAW REVIEW

**Chicago-Kent College of Law
Illinois Institute of Technology**

Published by the Chicago-Kent College of Law
Illinois Institute of Technology
565 West Adams Street, Chicago, Illinois 60661

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